

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 113 OF 2005

Dattu Ganpati Sutart
(since deceased by his LR's.)
1(A).Vilas Dattu Sutar & others.

... Appellants.

Versus.

Smt.Yashoda Anna Sutar & others.

... Respondents.

Shri G.S.Keluskar for the Appellants.

CORAM : ABHAY S. OKA, J.

DATED : 23rd February, 2005.

P.C.:

1. Heard Shri Keluskar for the Appellants.

2. The Courts below have passed a decree for partition and separate possession against the Appellants. Firstly Shri Keluskar submitted that the finding of the Court below on legal necessity is erroneous. After having perused the findings of the Court below I find that the findings are based on consideration of evidence on record and there is no perversity in the same.

3. Shri Keluskar next submitted that some of the joint family properties are not included in the list of suit properties. I find from the Judgment of the Appellate Court that it was admitted by the Appellants that apart from the suit lands the family was not having any other property. Therefore there is no substance in the said contention.

3. The third contention of Shri Keluskar is that without ordering enquiry under Order XX Rule 12 of the Code of Civil Procedure, 1908, the trial Court has passed decree for mesne profits. The said contention has been considered by the Appellate Court. The Appellate Court has held that the trial Court had jurisdiction to determine the mesne profits. The Appellate Court has also noted that the Appellants committed breach of the interim orders passed for payment of maintenance.

4. No substantial question of law arises in the Second Appeal. The Second Appeal is accordingly dismissed with no order as to costs.

Judge.